

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8032 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SIDUBHA R JADEJA

Versus

STATE OF GUJARAT AND OTHERS

Appearance:

MR JR NANAVATI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 21/04/2001

ORAL JUDGEMENT

The petitioner joined as Police Constable on 1st July, 1956 in the service of the respondents and since then has worked in different branches. It appears from the record that for seeking promotion to the post of Head Constable Grade-II and Head Constable Grade-I, the

petitioner had in past filed Special Civil Application No.3303 of 1979 and Special Civil Application No.3214 of 1980 respectively.

2. On 4th January, 1988 respondent No.2 passed an order of premature retirement. In pursuance thereto, respondent No.3 has issued the impugned notice dated 7th January, 1988, Annexure 'A'. It is this order and the notice which are under challenge in the present petition.

3. Following relief has been claimed by the petitioner :

"(A) To issue a writ of certiorari and/or a writ, order or direction in the nature of certiorari quashing and setting aside the notice dated 7th January, 1988 (Annexure 'B' to the petition) issued by the respondent No.3 in pursuance of the order bearing No.3027/3092/87/123 dated 4.1.1988 issued by the respondent No.2 and allow this petition with costs."

4. The say of the petitioner is that, his record since 1957 till date is satisfactory and there are no adverse remarks communicated to the petitioner at any time and further no departmental inquiry has ever been instituted against the petitioner. It is further averred that the service record of the petitioner is clean and he has rendered satisfactory service to the satisfaction of his superiors/higher officers. The petitioner has further stated that it is at the instance of the District Superintendent of Police, one Shri.Nareshkumar Bhandari, Respondent No.3 that the impugned order dated 4th January, 1988 came to be passed by Respondent No.2 without application of mind to the relevant case papers and record of service of the petitioner. Therefore, according to the petitioner, the order of premature retirement is bad in law and in absence of recording any reasons, the said order is without jurisdiction.

5. Mr.Nanavati, appearing on behalf of the petitioner submitted that the service record of the petitioner is satisfactory and he has been granted 39 awards from 1979 till 1988. Thus, according to Mr.Nanavati, this is a case of victimization and the impugned order and notice are required to be quashed.

6. As against this, the learned A.G.P. has placed a sheet showing remarks in relation to the service record of the petitioner. It was pointed out from the said sheet of remarks that as there are various different officers of the rank of District Superintendent of Police who have passed various adverse remarks in case of the petitioner, right from 1957 onwards, the contention as regards malafides and victimization cannot be accepted.

7. We have gone through the facts on record as well as the sheet of remarks placed on records, on behalf of the respondents and we find that this petition is required to be dismissed.

8. The Supreme Court in case of State of Gujarat V/s Umedbhai M. Patel in Civil Appeal No.1561 of 2001 in judgement dated 27th February, 2001 has summarized the principal as to compulsory retirement in the following terms :

"The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarized thus :

- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
- (iii) For better administration, it is necessary to chop off deadwood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
- (v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

Applying the aforesaid principles to the facts of the case, we do not find any error in the impugned order dated 4th January, 1988.

This petition is accordingly dismissed. Rule discharged with no order as to costs.

(D.A. Mehta, J)
'Bhavesh'